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6 IN THE UNITED STATES DISTRICT COURT
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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10 FIRST AMERICAN SPECIALTY
11 INSURANCE COMPANY,

No. C 16-05951 WHA

12 Plaintiff,

ORDER RE SEALING MOTION

13 v.

14 FORD MOTOR COMPANY, *et al.*,

15 Defendants.
16 _____/

INTRODUCTION

17 Defendant Ford Motor Company moves to seal the amount it agreed to pay to plaintiff
18 First American Specialty Insurance Company in connection with the forthcoming good-faith-
19 settlement motion. Defendants Carmax Auto Superstores California, LLC, and Carmax Auto
20 Superstores West Coast, Inc. oppose Ford's motion.
21

STATEMENT

22 First American provided insurance for Anthony Santos's home in Fremont, California,
23 and acts as subrogee in this action. First American alleges that insured purchased a 2002 Ford
24 F-150 from Carmax, which had a defective speed control deactivation switch ("SCDS"). The
25 SCDS was the subject of a recall because it was known to fail without warning and combust,
26 but defendants failed to inform insured of the recall. The defective SCDS caught fire while on
27 insured's property and caused damage to his home (Compl. ¶¶ 8–13).
28

First American sued Ford and Carmax, and Ford reached a settlement with First
American on April 28, 2017 (Dkt. No. 32). Ford moves to seal the settlement amount in its

1 forthcoming motion for a determination of good-faith settlement on the grounds that the
2 settlement agreement includes a contractual obligation to maintain the settlement's
3 confidentiality, and disclosing the settlement amount will cause Ford prejudice in pending and
4 future lawsuits. Carmax opposes Ford's motion. For the reasons set forth herein, Ford's
5 request is **DENIED**.

6 ANALYSIS

7 To determine whether the "compelling reason" or the "good cause" standard applies to
8 this sealing motion, the Court must first determine whether a motion for good-faith settlement is
9 dispositive or non-dispositive. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172,
10 1178–80 (9th Cir. 2006). Our court of appeals has not provided guidance on this issue and only
11 two decisions in this district have directly addressed it. In *Prosurance Group, Inc. v. Liberty*
12 *Mutual Group, Inc.*, No. 10-CV-02600-LHK, 2011 WL 704456, at *1 (N.D. Cal. Feb. 18, 2011)
13 (Judge Lucy Koh), Judge Koh held that "a motion to determine good faith settlement is only
14 tangentially related to the merits of the underlying cause of action" and should therefore be
15 subject to the good-cause standard for sealing. Since that ruling, one other court in this district
16 has considered a sealing motion in connection with a determination of good faith settlement,
17 and likewise applied the good cause standard. *Wendell v. Johnson & Johnson*, No. C 09-4124
18 CW, 2014 WL 12644224, at *2 (N.D. Cal. June 10, 2014) (Chief Judge Claudia Wilken). The
19 Court agrees with Judge Koh's reasoning, and will therefore consider whether Ford has made a
20 particularized showing of good cause as to why this motion should be granted.

21 A party must make a "particularized showing" of good cause with respect to any
22 individual document in order to justify sealing the document. *Kamakana*, 447 F.3d at 1180.
23 "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning" are
24 not sufficient. *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th Cir.1992) (internal
25 quotation marks and citation omitted). Moreover, Ford must establish that "the document, or
26 portions thereof [are] privileged or protectable as a trade secret or otherwise entitled to
27 protection under the law." Civil L.R. 79–5(b).
28

1 In support of its motion, Ford submits an attorney declaration stating that disclosing the
2 settlement amount will prejudice Ford because “similar claims and lawsuits involving Ford
3 vehicles are still active and additional claims and lawsuits can be brought” (Gaus Decl. ¶ 6). It
4 further observes that the settlement agreement was entered into subject to a confidentiality
5 clause and was marked confidential pursuant to the parties’ protective order (¶¶ 3–4), and that
6 making the amount of the settlement public would contravene the public policy of adhering to
7 contractual obligations and promoting settlement (Mot. at 2–3). Ford does not identify any
8 relevant legal authority supporting its arguments, instead mistakenly citing only California state
9 law in its motion.

10 Ford’s reasoning is unpersuasive. The parties’ private agreement to keep the settlement
11 confidential is insufficient reason to seal the Court’s records. Moreover, Ford’s argument “that
12 the production of records may lead to . . . exposure to further litigation will not, without more,
13 compel the court to seal . . .” *Kamakana*, 447 F.3d at 1179. The public has a strong interest
14 in understanding how this Court applies California’s good faith settlement law — the
15 application of which would be constrained if the Court cannot publicize its analysis of the
16 settlement.

17 Finally, as Carmax points out, it is entitled to learn the amount that Ford has agreed to
18 pay in order to decide whether to oppose Ford’s motion to determine good faith settlement.
19 Ford has not explained how the non-settling defendant will know the amount of the settlement if
20 it is sealed. To afford Carmax an opportunity to challenge the good faith settlement, Carmax
21 must know what it is up against.

22 CONCLUSION

23 For the foregoing reasons, Ford’s administrative motion to seal its settlement amount is
24 **DENIED**. Ford shall re-file its settlement agreement consistent with this order and Civil Local
25 Rule 79-5 by **JUNE 15**.

26 **IT IS SO ORDERED.**

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28 Dated: June 8, 2017.


WILLIAM ALSUP

United States District Court

For the Northern District of California

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UNITED STATES DISTRICT
JUDGE